

January 17, 2019

VIA ECF

Michael E. Gans
Clerk of Court
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street
Room 24.329
St. Louis, MO 63102

Re: *Bhatti, et al. v. Federal Housing Finance Agency, et al.*,
No. 18-2506

Dear Mr. Gans:

Pursuant to Rule 43(c)(2) of the Federal Rules of Appellate Procedure, the FHFA Defendants provide notice that Joseph M. Otting has been designated Acting Director of the Federal Housing Finance Agency, effective January 7, 2019. We respectfully request that the caption be updated to substitute Mr. Otting for Defendant Melvin L. Watt.

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, the FHFA Defendants further advise that, under new leadership, FHFA has reconsidered certain issues relating to Count I of Plaintiffs' Complaint. It remains FHFA's position that it is unnecessary for this Court to reach the constitutionality of the Housing and Economic Recovery Act's for-cause removal provision in order to affirm the district court's dismissal of Count I. To the extent the Court concludes it is necessary to reach the constitutional issue, FHFA will no longer defend the constitutionality of HERA's for-cause removal provision and agrees with the analysis in Section II of the Brief for the Treasury Department that the provision infringes on the President's

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control of executive authority. The FHFA Defendants accordingly withdraw the arguments set forth in the Brief of Defendants-Appellees Federal Housing Finance Agency and Melvin L. Watt that HERA's provision that FHFA's single Director may be removed only for cause is constitutional. The FHFA Defendants continue to urge this Court to affirm the dismissal of Plaintiffs' other claims on all grounds previously advanced, and to affirm the dismissal of Count I on all grounds other than those specifically withdrawn herein.

Respectfully submitted,

s/ Robert J. Katerberg

Robert J. Katerberg

*Counsel for Defendants-Appellees
Federal Housing Finance Agency and
Acting Director Joseph M. Otting*

cc: All counsel of record

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2019, I filed the foregoing with the Clerk of the Court using the CM/ECF System. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Robert J. Katerberg

Robert J. Katerberg

*Counsel for Defendants-Appellees
Federal Housing Finance Agency and
Acting Director Joseph M. Otting*